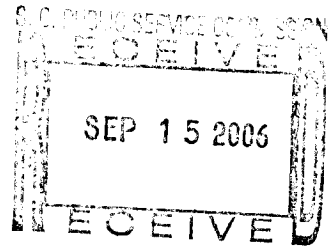




September 12, 2006

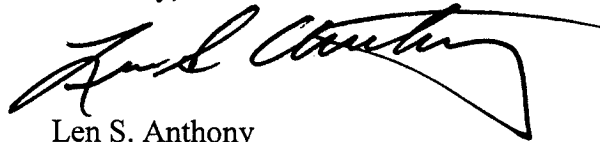


Mrs. Beatrice Weaver  
1253 Harllees Bridge Road  
Dillon, South Carolina 29536

Dear Mrs. Weaver:

In response to your request that Progress Energy Carolinas, Inc. articulate the legal basis for its refusal to restore service to your home, please see the attached copy of a letter I sent to your attorney, Dan Shine, in 2004, in response to his request, on your behalf, that service be established in your name at the residence in question. As you know, he did not respond to my letter, and PEC's position has not changed

Sincerely,



Len S. Anthony  
Deputy General Counsel – Regulatory Affairs

LSA:mhm

Attachments

c: South Carolina Public Service Commission



April 28, 2004

Mr. Daniel H. Shine  
911 West Hampton Street  
Dillon, South Carolina 29536

RE: Application for Service

Dear Dan:

I am responding to your April 14, 2004 letter concerning Beatrice E. Wallenstein's (a/k/a Mrs. Gary Weaver) request for electrical service to 1253 Harllees Bridge Road in Little Rock, South Carolina. I am returning the \$100.00 check from Be My Guest Wellness Retreat for deposit to establish electric service. Progress Energy Carolinas, Inc. (PEC) stands by its previous refusal to connect service to the main house at 1253 Harllees Bridge Road until the Weavers' \$5,314.34 in unpaid electric bills at this location is paid.

You state that for some years Mrs. Weaver has been caught in the middle of a dispute between Progress Energy and her husband Gary Weaver. This is an incorrect characterization. First, there is no dispute in the eyes of PEC or the South Carolina Public Service Commission or the courts, only a refusal by Mr. and Mrs. Weaver to pay back bills that they owe PEC. The Public Service Commission has ruled that the debt is owed to PEC. Secondly, this "dispute" is not simply between Gary Weaver and PEC, nor is Mrs. Weaver innocently caught in the middle. The fact is that Mr. *and* Mrs. Weaver, regardless of their present alleged living arrangements, are both inextricably tied to this debt, as you will see.

A review of pertinent public records indicates that a corporation named Renaissance International, Inc. owned by Mrs. Weaver bought the house in question in June 1994. The house is an 8,000 square foot plantation home on 9.4 acres of land. The purchase price of \$185,000 was paid in cash. In addition, the corporation bought a 206-acre tract of land on Harllees Bridge Road for \$135,000. Less than two years later the corporation, which by then was in forfeiture, sold the house and associated property to Mrs. Weaver for \$666,000. Mrs. Weaver secured a \$375,000 mortgage on the property. Our research shows that on December 31, 2003, the house and property were deeded to a living trust, of which Mrs. Weaver is the trustee/trustor.

South Carolina Public Service Commission rules pertinent to this case provide that the responsibility for a debt for unpaid electric bills is in effect shared by the members of the household who benefited from the service when and where the debt was incurred, and that in the

event that one of those members of the household subsequently attempts to establish service at the same location, the utility can refuse to connect service until the debt is paid. That concept is even more clear-cut when the only two members of the household are, as in this case, husband and wife.

The validity of both this interpretation and the rationale for this interpretation were directly addressed in the case of Haynsworth v. SCE&G, 488 F.Supp. 565 (USDC, SC, 1979). In this case electric service was in the husband's name, the couple separated, and the wife subsequently refused to pay the bill, claiming, just as Mrs. Weaver is now claiming, that the debt was the husband's responsibility as long as the account was in his name. The wife then applied for service in her own name at the same address. SCE&G refused to open an account in her name, relying on provision 4(b) of SCE&G's filed service regulations which reads: "Service will not be supplied by the Company to any applicant who is then indebted to the Company or who, at the time of application, is a member of the household of a former customer who is indebted to the Company, except upon payment of such indebtedness." Note the similarity to the relevant provision 2(c) in PEC's filed Service Regulations, which reads: "Company may refuse to furnish electric service to any Applicant, or Customer, who at the time is indebted to Company for electric service previously supplied to such Applicant or Customer, or any other member of his household, or business, in any area served by Company." (In the case of Clarke v. General Telephone Company, 232 S.E.2d 26 (1977), the South Carolina Supreme Court held that a utility's service regulations have the force and effect of law.)

The court upheld the service regulation as "necessitated by the nature of defendant's business":

This Court will not sanction a holding that would require defendant to continue service to a dwelling, even though the present account has a large overdue balance, just because a request is made by another member of that dwelling to put the account in his or her name. Such a holding would render the defendant powerless to collect its due and bind it into providing continuous utilities service without compensation, other than the minimal deposit made by the new applicant. If this Court were to rule as plaintiff urges and strike down defendant's section 4(b), every member of every household would be permitted to take a swing at the power company, amassing a substantial bill at the price of a small deposit. ...

Plaintiff asks the Court to disregard totally the most important fact of this lawsuit. That fact is that she and other applicants in her position have, at the time of application, received [\*\*11] the benefit of defendant's services without compensation to the defendant. If this Court were to find defendant's section 4(b) unlawful, defendant would be left with little hope of resolving [\*569] its outstanding accounts out of court. No longer could it use the denial of future service to those who apply and who are indebted to the defendant for past consumption as a means of insuring payment of its accounts. Defendant would have no recourse for collection except the courts, because the threat of termination would become meaningless...

The provision of defendant's General Terms and Conditions that plaintiff seeks to have set aside expressly enacts the following regulation of the state's Public Service Commission:

No electrical utility shall be required to furnish its service or continue its service to any applicant who, at the time of such application, is indebted, or any member of his household is indebted, under an undisputed bill to such electrical utility for service, previously furnished such applicant, or furnished any other member of the applicant's household or business. R103-342(k) S.C. Code (1976).

It is undisputed that the plaintiff resided in her Springlake Road home and used defendant's services during her separation from her husband. When she requested the account to her home be put in her name in September, 1975, she was indebted to defendant, and the above regulation directed and fully warranted defendant's refusal to open a new account in her name.

The main question, then, is whether Mrs. Weaver was a member of the household during the period when the debt was incurred, and the information below leaves no doubt that not only was she a member of the household, but in fact it was *her household*:

- First, during the five-year period over which the debt was incurred (1996-2001) Mrs. Weaver owned the house and property, solely and outright. In fact, Mr. Weaver stated to the Public Service Commission in November 2001 that he owns no personal property at all; the couple's assets (at least as of then) were all in Mrs. Weaver's name.
- Second, not only was Mrs. Weaver a member of the household during that five-year period, she was for much of the time the sole occupant, and thus enjoyed 100% of the benefits of the electric service during the time the debt was incurred. Gary Weaver testified before the Public Service Commission that during those years his business dealings took him out of the country for months at a time and that Mrs. Weaver stayed home and took care of the house and property.
- Mrs. Weaver accepted the burden of paying the electric bills. During Mr. Weaver's overseas sojourns the electric bills came to the Harllees Bridge address. Although they were addressed to Mr. Weaver, Mrs. Weaver opened them and paid them, using funds drawn on the account of Renaissance International, Inc., either in the form of checks or by her authorizing PEC to draft Renaissance's bank account.
- Mrs. Weaver handled all matters related to the electric service account with PEC (then called Carolina Power & Light Company, or CP&L) during the period in question. Our records show that Mrs. Weaver called PEC some forty-five times during that period, for a multitude of reasons: to establish heat pump loans with CP&L, to lease surge suppression equipment from CP&L, to have CP&L install five area lights on her property, to negotiate equal payment plan billing, to dispute the amounts of numerous bills, to make payment arrangements to avoid disconnection, and so on.

In short, the account was for all intents and purposes Mrs. Weaver's. Given the fact that she had financial control of the household during that five-year period, and was clearly making the day-to-day decisions on when and whether to pay the electric bills, Mrs. Weaver appears to bear the main responsibility for allowing the account to fall into such arrears. This leads to the issue of Mrs. Weaver's "unclean hands." Under this principle of equity, Mrs. Weaver cannot enjoy the benefit of the electricity provided to her residence, participate in the incurrence of the debt and then attempt to avoid responsibility by asserting that it is her husband's debt.

In addition, South Carolina's common law doctrine of necessities has been broadened by case law over the years to allow for either spouse to be held responsible for debts for necessities incurred by the other. *Peebles v. Disher*, 310 S.E. (2d) 823 (S.C. App. 1983); *Lee v. Lee*, 237 S.C. 532, 118 S.E. (2d) 171 (1961); *Campbell v. Campbell*, 200 S.C. 67, 20 S.E. (2d) 237 (1942); *Hiott v. Contracting Services*, 276 S.C. 632, 281 S.E. (2d) 224 (1981). Thus, an additional basis for Mrs. Weaver's liability for the account is the fact that electricity is a necessity. She and her husband consumed this necessity and they both are responsible for payment for this necessity.

As you may know, after the Public Service Commission decided in PEC's favor in a protracted complaint proceeding brought by Gary Weaver, PEC disconnected service to the house in December 2001 for non-pay. It has remained off ever since. Prior to her latest proposal to convert the house into a wellness retreat ("Be My Guest" LLC), Mrs. Weaver tried to get PEC to reconnect the service without paying the debt. In 2002, for instance, she founded a non-profit religious organization called St. Elizabeth of the Roses Benevolent Society, Inc., which was to be headquartered at the Harlees Bridge Road estate, and used a Ms. Dorothy Roscinsky, Corporate Treasurer of the society, to initiate contacts with PEC.

Finally, Mr. Weaver still maintains electric service in his name to an office/cottage behind the main house on the Harlees Bridge Road property, and whenever our meter readers and other personnel visit the property, he is typically there.

I am sending you this fairly lengthy but not exhaustive history of the electric service situation for Mrs. Weaver so that you will understand PEC's steadfast refusal to reconnect service to Mrs. Weaver's residence until this debt is paid and you will understand that there is no legal or equitable basis for Mrs. Weaver to institute litigation.

Sincerely,



Len S. Anthony  
Deputy General Counsel – Regulatory Affairs

LSA:gac

cc: David Butler, SCPSC

Attachment

" BE MY GUEST WELLNESS RETREAT  
RENAISSANCE ESTATE  
BEA WALLENSTEIN DIRECTOR  
1253 Harlees Bridge Rd - A  
Dillon, SC 29536

BE 551

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Bea Wallenstein

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